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November 24, 2014

Hon. Leonard D. Wexler, U.S.D.J.
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

RE: *Thomas Michael King v. MYC Resort, LLC d/b/a Montauk Yacht Club*
Case No. 14-cv-6235 (LDW)(GRB)
Our File No. 14-0032

Dear Judge Wexler:

I represent the Plaintiff in the above reference matter. I write in response to Defendants' letter dated November 20, 2014 requesting leave to file a motion to dismiss under Rule 12(b).

The Montauk Yacht Club (the Club) states that it wants the Court to consider its merit-based arguments. It also claims that the Court should not be determining the merits of the case because the case is subject to arbitration. These two positions are inconsistent.

Furthermore, the Club admits that some courts in this Circuit have rejected the position that the New York spread-of-hours law is unavailable to employees earning above the minimum wage. Def. Letter, Page 2, n. 3. These Courts have applied New York's spread-of-hours provision to all employees, even those earning more than minimum wage. *See, e.g., Cuzco v. Orion Builders, Inc.*, 06 Civ. 2789, 2010 U.S. Dist. LEXIS 51622, 2010 WL 2143662 at *2, *4 & n.8 (S.D.N.Y. May 26, 2010); *Doo Nam Yang v. ACBL Corp.*, 427 F. Supp. 2d 327, 339-40 (S.D.N.Y. 2005).

For these reasons, Plaintiff requests that leave to file a motion under Rule 12(b) on the basis that the complaint fails to state a claim as a matter of law be denied.

Respectfully submitted,

Steven John Moser

CC: Aaron Warshaw (Via ECF)